



EM v KKJ (Divorce Cause E125 of 2022) [2023] KEMC 62 (KLR) (23 March 2023) (Judgment)

Neutral citation: [2023] KEMC 62 (KLR)

**REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)**

DIVORCE CAUSE E125 OF 2022

JP ADUKE, SRM

MARCH 23, 2023

BETWEEN

EM PETITIONER

AND

KKJ RESPONDENT

JUDGMENT

1. The petition filed the petition dated January 5, 2022 seeking a divorce on grounds of desertion, adultery, cruelty and irretrievable breakdown of the marriage. Return of service on record shows that the respondent was served with the petition and annexures thereto. The respondent neither entered appearance nor filed a response. The petitioner filed an application seeking to have the petition proceed undefended. Return of service on record shows the petitioner served the respondent with the said application. These proceedings proceeded undefended.
2. The brief facts of this case are contained in paragraph 1-12 of the petition on record. In summary EM and KKJ solemnized their marriage on November 22, 2019 at the Office of the Registrar of Marriages. They have nil issues together from the union. Both the Petitioner and the Respondent are domiciled in Kenya. The parties have no intentions of salvaging the marriage. The particulars of the grounds for divorce are outlined as follows:
 1. Irretrievable breakdown of marriage;
 2. Desertion;
 3. Cruelty;
 4. Adultery;
3. At the hearing thereof, the petitioner relied on her petition and verifying affidavit on record as evidence in support of the petition for the divorce. Notably, the petitioner averred that the contents of the petition remained true as at the date of hearing. She prayed for an order of dissolution of the marriage.



4. The issue for determination before this court is whether or not the marriage between the parties merits an order of divorce under the *Marriage Act* 2014.
5. The applicable law is Section 66 of the *Marriage Act* (on dissolution of Civil Marriages) which provides that the court may grant separation or divorce on the following grounds:
 1. Adultery by the other spouse
 2. Cruelty by the other spouse
 3. Exception depravity by the other spouse
 4. Desertion by the other spouse
 5. The irretrievable breakdown of the marriage
6. I have considered the particulars of the grounds outlined in the petition and how those have contributed to the irretrievable breakdown of the marriage as contemplated under section 66 of the *marriage Act*. I have also noted the length of the physical separation of the couple herein, the levels of antagonism between the parties and relied on the reasoning of the court in *JSM vs ENB* (2015). With respect to intention to salvage the union, I have noted the unequivocal terms of para 8 of the petition on lack of such intention. The reasoning of the court in *ROK V MJB* and *TPH v NVS* 2017 eKLR cannot be emphasized enough-

“ marriage is a voluntary union.....this court cannot by any means order or compel the parties to remain married when the petitioner has categorically stated that she wants the same dissolved....” Seeing as this court cannot force two adults to live together when there is no more love between them, I allow the petition dated January 5, 2022 on the following terms:

1. The marriage between the two be hereby dissolved.
2. Decree nisi do issue to be made absolute in 30 days.
3. This being a family matter, each party to bear their own costs.

JUDGMENT DELIVERED, DATED AND SIGNED AT NAIROBI THIS 23RD MARCH 2023 AT 0842HRS.

ADUKE JEAL PRAXADES ATIENO
SENIOR RESIDENT MAGISTRATE

